

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED

DOC #:

DATE FILED: 4/10/08

----- X
PICTURE PATENTS, LLC :

Plaintiff, :

v. :

Case No. 07 CV 05465 (JGK) (HBP)

TERRA HOLDINGS, LLC :
HALSTEAD PROPERTY, LLC :
BROWN HARRIS STEVENS, LLC :

Defendants. :

----- X
PICTURE PATENTS, LLC, :

Plaintiff, :

v. :

Case No. 07 CV 05567 (JGK) (HBP)

AEROPOSTALE, INC., DICK'S :
SPORTING GOODS, INC., CHARLOTTE :
RUSSE, INC., GSI COMMERCE :
SOLUTIONS, INC., FOGDOG, INC., :
NATIONAL BASKETBALL :
ASSOCIATION, NBA PROPERTIES, INC., :
NBA MEDIA VENTURES, LLC, MAJOR :
LEAGUE BASEBALL PROPERTIES, INC., :
MLB ADVANCED MEDIA, L.P., LINENS 'N :
THINGS, INC., TWEETER NEWCO, LLC, :
TWEETER OPCO, LLC, BUY.COM, INC. :

Defendants. :

----- X

**RULE 26(f) PROPOSED CIVIL CASE
DISCOVERY PLAN AND SCHEDULING ORDER**

The parties have conferred and, pursuant to Rules 26(f) and 16 of the Federal Rules Civil Procedure, submit the following proposed discovery plan and scheduling order to the Court:

I. Consolidation

The cases shall be informally consolidated for purposes of discovery. The parties in both the above captioned cases reserve the right to seek or oppose consolidation for purposes of trial.

II. Joinder of Additional Parties

Joinder of additional parties may be accomplished 4/15/08
without leave of Court

III. Filing of Amended Pleadings

Amended pleadings may be filed without leave of Court 5/15/08

IV. Topics for Discovery

- A. Plaintiff: Infringement, Damages including the amount of reasonable royalty, Willfulness
- B. Defendants: Infringement, Damages, Defenses, and Counterclaims including but not limited to e.g. prosecution history, prior art, obviousness, royalty, market factors, laches, invalidity, marking, notice, licensing, inequitable conduct, and invention

V. Discovery

- A. Plaintiff shall serve claim charts removing all references to Rule 408. 4/11/08
Plaintiff shall amend the claim charts to include Plaintiff's present knowledge, including promotional e-mails, marketing materials and advertisements.
- B. Rule 26(a) disclosures are to be served 5/15/08
- C. All fact discovery is to be completed 12/1/08
- D. Contention Interrogatories on Infringement, 6/1/08
Invalidity and Unenforceability may be served
By Defendants
- E. Contention Interrogatories on Infringement may be served 6/15/08
by Plaintiff
- F. Contention Interrogatories on Invalidity and Unenforceability may be 6/1/08
served by Plaintiff
- G. Defendants Terra Holdings, LLC and Halstead Property, LLC shall 4/25/08
respond to Plaintiff's First Set of Interrogatories and First Set of
Request for Production of Documents.

VI. Electronically Stored Information

The parties agree to follow Fed. R. Civ.P. 34 and to confer and develop a plan with respect to the production of electronically stored information.

VII. Claim Construction

- | | | |
|----|--|---------|
| A. | The parties shall exchange a list of patent claim terms which may need to be construed | 8/15/08 |
| B. | The parties shall exchange their proposed claim constructions | 8/29/08 |

VIII. Expert Discovery

- | | | |
|----|---|---------|
| A. | Opening expert report for the party bearing the burden of proof shall be served | 12/8/08 |
| B. | Rebuttal expert report shall be served | 1/23/09 |
| C. | Expert discovery closes | 3/5/09 |
| D. | Dispositive motions shall be filed no later than | 4/3/09 |

IX. Pre-Trial Order

The parties will submit a pre-trial order in a form conforming with the Federal Rules of Civil Procedure and the Court's instructions on 4/24/09 or 30 days after a decision on any dispositive motions, whichever is later.

X. Pre-Trial Conference

The parties may hold a pre-trial conference pursuant to Fed. R. Civ.P. 16(d) at any time upon request to the Court.

XI. Protective Order

The parties agree that a protective order governing the exchange of confidential information will be necessary in this case and will file a stipulated protective order.

XII. Trial

This case will be tried by a jury.

The cases must be ready for trial on 48 hours notice on or after 5/1/09 or 45 days after a decision on any dispositive motion, whichever is later.

Respectfully submitted,

Counsel

ALSTON & BIRD LLP
90 Park Avenue
New York, New York 10016-1387

COOLEY GODWARD KRONISH LLP
1114 Avenue of Americas
New York, New York 10036-7798

By: /s/ Thomas J. Parker
Thomas J. Parker, Esq.

By: /s/ Janet L. Cullum
Janet L. Cullum, Esq.

Attorneys for Picture Patents, LLC

*Attorneys for
Aeropostale, Inc.
Dick's Sporting Goods, Inc.
GSI Commerce Solutions, Inc.
Charlotte Russe, Inc.
Linens 'n Things, Inc.
National Basketball Association
NBA Properties, Inc.
NBA Media Ventures, LLC
Major League Baseball Properties, Inc.
MLB Advanced Media, Inc.*

THOMPSON & KNIGHT LLP
919 Third Avenue, 39th Floor
New York, New York 10022-3915

LAW OFFICES OF ANDREW P. SAULITIS
P.C.
555 Madison Avenue
New York, New York 10022-3301

By: /s/ John J. Driscoll
John J. Driscoll, Esq.

By: /s/ Andrew P. Saulitis
Andrew P. Saulitis, Esq.

Attorneys for Buy.com

*Attorneys for
Terra Holdings, LLC
Halstead Property, LLC
Brown Harris Stevens, LLC*

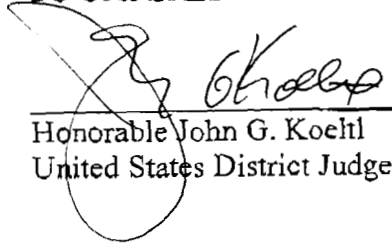
BRYAN CAVE LLP
1290 Avenue of Americas
New York, New York 10104

By: /s/ Suzanne M. Berger
Suzanne M. Berger, Esq.
Joseph Richetti, Esq.

Attorneys for
Tweeter Newco, LLC
Tweeter Opco, LLC

Dated: 4/9, 2008

SO ORDERED



Honorable John G. Koehl
United States District Judge